

1 HONORABLE MICHELLE L. PETERSON  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 BUNGIE, INC., a Delaware corporation,  
11 Plaintiff,

12 v.

13 JOSHUA FISHER, JACOB W. MAHURON  
14 A/K/A “PRAGMATICITAX,” MATTHEW  
15 ABBOTT A/K/A “NOVA,” JOSE  
16 DEJESUS AKA “DAVID HASTINGS”  
17 A/K/A “J3STER,” TRAVERS RUTTEN  
18 A/K/A “TRAVERS7134,” JESSE  
19 WATSON A/K/A “JESSEWATSON3944,”  
20 JOHN DOE NO. 1 A/K/A “CALC”,  
21 ANDREW THORPE A/K/A “CYPHER,”  
22 RYAN POWER AKA “KHALEESI,” JOHN  
23 DOE NO. 4 A/K/A “GOD,” JOHN DOE  
24 NO. 5 A/K/A “C52YOU,” JOHN DOE NO.  
25 6 A/K/A “LELABOWERS74,” JOHN DOE  
26 NO. 7 A/K/A “FRAMEWORK,” KICHING  
27 KANG A/K/A “SEQUEL,” JOHN DOE  
NO. 9 A/K/A “1NVITUS,” DAVID  
BRINLEE A/K/A “SINISTER,” JOHN DOE  
NO. 11 A/K/A “THEGUY,” JOHN DOE  
NO. 12 A/K/A “BEATRED,” JOHN DOE  
NO. 13 A/K/A “COMMUNITYMODS,”  
JOHN DOE NO. 14 A/K/A “PALACE,”  
JOHN DOE NO. 15 A/K/A  
“VINCENTPRICE,” JOHN DOE NO. 16  
A/K/A “ESSWAN,” JOHN DOE NO.  
17 A/K/A “ADMIRAL,” JOHN DOE NO. 18  
A/K/A “TOMDICKHARRY,” JOHN DOE  
NO. 19 A/K/A “ROB,” JOHN DOE NO. 20  
A/K/A “STAYLOCKED,” JOHN DOE NO.

Case No. 2:23-cv-01143-MLP

PLAINTIFF BUNGIE, INC.’S *EX PARTE*  
FOURTH MOTION FOR AN EXTENSION  
OF THE SERVICE DEADLINE UNDER  
RULE 4(m)

NOTE ON MOTION CALENDAR:  
September 13, 2024

1 21 A/K/A "FIVE-STAR," JOHN DOE NO.  
 2 22 A/K/A "HORROR," JOHN DOE NO. 23  
 3 A/K/A ELITECHEATZ.CO, JOHN DOE  
 4 NO. 24 A/K/A MIHAI LUCIAN, JOHN  
 5 DOE NO. 25 A/K/A NATHAN BERNARD,  
 6 A/K/A "DOVE," JOHN DOE NO. 26  
 7 A/K/A "BLACKMAMBA," JOHN DOE  
 8 NO. 27 A/K/A "BILLNYE," JOHN DOE  
 9 NO. 28 A/K/A "BANEK192," JOHN DOE  
 10 NO. 29 A/K/A SHOPPY ECOMMERCE  
 11 LTD, JOHN DOE NO. 30 A/K/A/ FINN  
 12 GRIMPE A/K/A "FINNDEV," AND JOHN  
 13 DOES NO. 31-50,

14 Defendants.

15 Plaintiff Bungie, Inc. hereby moves for an additional 60-day extension to the Rule 4(m)  
 16 deadline for Bungie to serve domestic Defendants in order to permit Bungie to complete the  
 17 process of identifying and locating such Defendants.

18 **I. INTRODUCTION**

19 Bungie is the owner and developer of the massive multiplayer online video game shooter  
 20 *Destiny 2*. Defendants develop, sell, market, and support cheat software targeted to attack  
 21 *Destiny 2*. *See generally* Dkt. 54. Recognizing that Defendants have deliberately obscured their  
 22 identities and locations, this Court granted Bungie's requests for third-party discovery on  
 23 November 29, 2023 and April 24, 2024. *See* Dkts. 27, 51. Bungie moved for a third and final  
 24 round of third-party discovery on August 23, *see* Dkt. 58. Bungie has sent every subpoena the  
 25 Court permitted it to send. Additionally, Bungie amended its complaint to encompass what it has  
 26 discovered, *see* Dkt. 54, after the Court granted it leave to do so, *see* Dkt. 53.

27 Bungie is prepared to serve its final wave of subpoenas as soon as it is given permission  
 28 to do so. *See* Dkts. 58-60. Bungie has also sent or re-sent Rule 4 waiver requests with the  
 29 Amended Complaint to every Defendant it has identified. Declaration of Dylan Schmeyer ¶ 6.  
 30 Bungie is not expecting responses to most of those waiver requests, as it did not receive any for  
 31 the round it sent with the initial complaint, and is preparing to move forward with formal service  
 32 wherever possible. *Id.* Bungie is also preparing to move for alternative service for those

1 Defendants it has not been able to pin down to an address. *Id.* at ¶ 7. Bungie needs the  
 2 productions from its requested final round of subpoenas, and a brief period to analyze those  
 3 productions, in order to ensure that the request for alternative service only encompasses those it  
 4 cannot serve by traditional means. *Id.* Once alternative service is sought and identified U.S.  
 5 Defendants who do not respond to Rule 4 waiver requests are served, Bungie can move forward  
 6 with service on international Defendants while moving forward with the served Defendants.

7 Therefore, Bungie seeks an extension of 60 days to the Rule 4(m) deadline from the  
 8 issuance of the Court's Order on this Motion.

9 **II. FACTUAL BACKGROUND**

10 On October 27, 2023, Bungie filed a motion seeking third-party discovery to unmask  
 11 anonymous defendants for service of process. Dkt. 24. The Court granted that motion in part on  
 12 November 29, 2023. Dkt. 27. Eighteen subpoenas were served in accordance with the Order.  
 13 Dkt. 29 at ¶ 10. On April 9, 2024, Bungie filed a second motion seeking further third-party  
 14 discovery, Dkt. 40, which the Court granted on April 24th, Dkt. 51. Six subpoenas were served  
 15 in accordance with that Order. Schmeyer Declaration ¶ 5. Bungie filed a third motion seeking a  
 16 final round of third-party discovery on August 23rd, which is currently pending. Dkt. 58.

17 Bungie has also sent Rule 4 waiver requests with its Amended Complaint to the  
 18 Defendants it has identified, including those who previously received such requests for the  
 19 original complaint. Schmeyer Declaration ¶ 6. Bungie will afford reasonable time to respond,  
 20 though it is prepared to promptly press forward with formal service or requests for alternative  
 21 service given that one of the only two responses it has received to the original waiver requests  
 22 instructed counsel to take this lawsuit and "stuff it". Dkt. 56 at ¶ 8. Bungie wishes to formally  
 23 serve everyone it can, thereby making its alternative service requests as narrow as possible and  
 24 only where necessary due to an inability to locate an address for a Defendant through Bungie's  
 25 ongoing investigation and permitted third-party discovery. As such, Bungie needs the  
 26 productions from its final round of subpoenas that are the subject of its pending motion to  
 27 finalize its list of Defendants who cannot be served by traditional means. While every effort was

1 made to avoid the need for an additional service deadline extension given the Court's prior grant  
 2 of a generous 90-day extension, Bungie did not receive the final production from prior  
 3 subpoenas until August 1, due to Discord's innocent confusion that delayed its production by  
 4 weeks. Schmeyer Declaration ¶¶ 8-11. Bungie required time to process this voluminous  
 5 production to finalize and render precise its August 23rd motion for a final round of third-party  
 6 discovery. *Id* at ¶ 11.

7 Bungie therefore submits that there is good cause to extend the Rule 4(m) deadline,  
 8 currently set at September 25th, by a further 60 days to allow the final third-party discovery  
 9 Bungie has requested to reach its conclusion, and to allow it to organize its service of process, or  
 10 its motions for alternative service, for currently identified Defendants. Bungie anticipates that its  
 11 next filings pertaining to service will be its requests for alternative service and its affidavits of  
 12 service (or Rule 4 waivers should any be received), so long as it has obtained the final  
 13 productions it seeks. This case can then proceed.

### 14 **III. LEGAL ARGUMENT**

15 Rule 4(m) states that a court "must extend the time for service for an appropriate period"  
 16 where the plaintiff shows good cause for an inability to serve a defendant within 90 days of filing  
 17 the complaint. FED. R. CIV. P. 4(m). *See also Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir.  
 18 2007) ("Rule 4(m) . . . requires a district court to grant an extension of time when the plaintiff  
 19 shows good cause for the delay.") (emphasis omitted). A showing of good cause may involve  
 20 various factors, such as the lack of prejudice to defendant and the significant prejudice to  
 21 plaintiff if the extension were not granted and the complaint was dismissed, and the defendant's  
 22 receipt of actual notice of the lawsuit. *See, e.g., Efaw*, 473 F.3d at 1041; *Madrid v. Adkins*,  
 23 No. C19-1710 JLR-TLF, 2020 U.S. Dist. LEXIS 173154, \*6, 8 (W.D. Wash. Aug. 20, 2020),  
 24 *report & recommendation adopted by* 2020 U.S. Dist. LEXIS 186681 (W.D. Wash. Oct. 6,  
 25 2020); *Hoefer v. Apple Wash. LLC*, No. C17-1369 RAJ, 2018 U.S. Dist. LEXIS 216863, \*5-6  
 26 (W.D. Wash. Dec. 27, 2018). Upon a showing of good cause for the lack of service, the district  
 27 court must extend the time period for service. *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001).

1 Even absent a showing of good cause, the court still has “the discretion to dismiss without  
 2 prejudice or extend the time period.” *Id.* (citing *Petrucelli v. Boehringer & Ratzinger, GMBH*, 46  
 3 F.3d 1298, 1305 (3d Cir.1995)).

4 The Ninth Circuit has also concluded that Rule 4’s timing requirement for service is  
 5 “inapplicable to service in a foreign country[.]” *Lucas v. Natoli*, 936 F.2d 432 (9th Cir. 1991)  
 6 (per curiam). Thus, where it appears defendants may need to be served in foreign countries, the  
 7 time limit for service in Rule 4(m) does not apply. *Amazon.com Inc. v. Awns*, No. C22-402-MLP,  
 8 2022 U.S. Dist. LEXIS 185807, \*2 (W.D. Wash. Oct. 11, 2022). However, “[d]espite the lack of  
 9 an express time limit, Rule 4(m) does not preclude the court from setting a reasonable time limit  
 10 for service in a foreign country to properly manage a civil case.” *Id.* (internal quotation marks  
 11 omitted). Bungie has not completed its investigation into the Unidentified Defendants and does  
 12 not fully know which are residents of the United States and which reside in a foreign country,  
 13 although many are believed to be domiciled abroad. Dkt. 56 at ¶ 4. Bungie is in the process of  
 14 affecting service, by waiver or formal service, of the U.S. Defendants it has been able to locate.  
 15 *Id.* at ¶ 5. Bungie has sent Rule 4 waiver requests to the Defendants it has identified. Schmeyer  
 16 Declaration ¶ 6. To the extent that any are residents of a foreign country, no time limit has yet  
 17 been set, and Bungie will pursue serving them, once they are identified, in the same manner as it  
 18 is pursuing foreign Defendants it has already identified and located. *See* Dkt. 26 at ¶¶ 4-5;  
 19 Dkt. 41 at ¶ 6.

20 Bungie has good cause for having not yet served the remaining unserved domestic  
 21 Defendants: Namely, that Bungie doesn’t know who they are yet, whether they are in fact in the  
 22 United States or in a foreign country, the address of their primary residence, or any other contact  
 23 information sufficient to affect service. Where Bungie has, through its diligent investigative  
 24 efforts, identified Defendants and ascertained that they are U.S. residents, it has served those  
 25 Defendants or sent them Rule 4 waiver requests, though none have yet appeared in this case.  
 26 Schmeyer Declaration ¶ 6; *see also* Dkt. 26 at ¶¶ 4-7; Dkt. 41 at ¶¶ 5-6; Dkt. 56 at ¶¶ 5-10.  
 27 Further, Bungie has, with the Court’s permission, issued two waves of subpoenas to third parties

1 to identify, locate and affect service on the remaining Unidentified Defendants. While more  
 2 Does have been discovered, and the Court has granted leave that they be amended into the  
 3 complaint, a number of them remain unidentified.<sup>1</sup> More time to identify and serve these  
 4 Unidentified Defendants, whether they are foreign or domestic, is required for Bungie to  
 5 conclude its investigation and execute service.

6 There is no undue prejudice to the Unidentified Defendants if such an extension were  
 7 granted. The extension is necessary to allow time for Bungie to (1) either identify Defendants so  
 8 they may be served or so Bungie may exhaust its efforts to do so, and (2) move for alternative  
 9 service of the identified Defendants that Bungie is ultimately unable to obtain a physical address  
 10 for. Bungie, on the other hand, would be significantly prejudiced, as the Unidentified Defendants  
 11 could continue their tortious conduct (and potentially add new or additional layers of anonymity  
 12 to avoid identification) while Bungie continued to toil to identify them, functionally rewarding  
 13 them for obfuscating their identities. This delay would not negatively impact the orderly progress  
 14 of the case. The additional 60 days is solely to allow Bungie time to complete its efforts to  
 15 identify and locate the Unidentified Defendants, or so it can determine which Defendants it will  
 16 need to seek alternative service for. Further, the reason for the delay is largely, if not entirely, out  
 17 of Bungie's control. Any delay is due in significant part to the Defendants' ongoing attempts to  
 18 conceal their identities. *See, e.g.*, Dkt. 25 at ¶¶ 5-15. The potential but heretofore unknown  
 19 foreign residence of many Unidentified Defendants has further complicated and delayed efforts  
 20 to identify, locate, and serve them. Finally, Bungie has acted diligently and in good faith in  
 21 promptly pursuing multiple avenues of discovery and investigation – including the pursuit of  
 22 third-party discovery via 24 subpoenas so far with 6 or more hopefully to come – intended to  
 23 identify, name, and serve Defendants. *See, e.g.*, *Vanleeuwen v. Keyuan Petrochemicals, Inc.*, No.  
 24 CV 11-9495 PSG (JCGx), 2013 U.S. Dist. LEXIS 121976, \*13-14 (C.D. Cal. Aug. 26, 2013)

25  
 26 <sup>1</sup> Since filing its Amended Complaint, Bungie has been successful in identifying and locating  
 27 some of the Doe Defendants and has requested issuance of summons to serve those Defendants.  
*See* Dkts. 61-64.

1 (difficulty in locating defendant and plaintiffs' attempts to locate defendant through discovery  
2 supported the conclusion that plaintiffs acted in good faith).

3 If the Court concludes that this is not good cause requiring an extension under the  
4 mandatory language of Rule 4(m), it should still exercise its discretion and grant the extension in  
5 the interest of judicial efficiency. Bungie has invested considerable time and resources into  
6 determining the obfuscated identities of the Defendants, to some success – Bungie believes it has  
7 identified the majority. Bungie has pursued the third-party discovery the Court has allowed it to,  
8 and is merely awaiting the remaining productions of the final round it has sought in its pending  
9 motion to make final decisions as to service. These productions will allow it to either identify  
10 and locate the Unidentified Defendants for traditional service or to identify the next steps that are  
11 necessary to request alternative service. Absent a grant of more time, it is conceivable that other  
12 U.S. Defendants could be dismissed from this suit, without prejudice, for lack of service.  
13 Bungie's efforts to identify them would not cease, however, and once they were identified,  
14 Bungie would sue them again once their names and addresses were discovered. Allowing more  
15 time for Bungie to complete the limited third-party discovery it has sought now, so this can be  
16 accomplished on a reasonable timeline without these additional steps, is the most efficient path.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Bungie respectfully requests that the Court extend Bungie's  
19 deadline to serve Defendants by 60 days from the date of the order on this Motion.

20 Dated this 13th day of September, 2024.

Respectfully submitted,

21 KAMERMAN, UNCYK, SONIKER &  
22 KLEIN, P.C.

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2                   **WORD LIMIT CERTIFICATION**  
3

4                   I certify that this memorandum contains 2,089 words, in compliance with the Local Civil  
5                   Rules.  
6

7                   By: *s/Stacia N. Lay*  
8                   Stacia N. Lay, WSBA #30594  
9